IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2968 OF 2005

Kondiba Tulshiram Sawant & Ors. .. Petitioners

Vs.

Shankarrao Ganpat Pavale & Anr. ..Respondents

Mr.Behram Shroff and Mr.Ashok R.Verma i/b M/s.Gagrat & Co. for the petitioners

Mr.A.P.Vanarase, A.G.P. for the respondent no.2

Sarpanch present in person on behalf of respondent no.1 pursuant to notice

CORAM : S.U.KAMDAR, J
DATED : 22ND DECEMBER, 2005

P.C.:

1. A Notice was issued as far back as April 2005. The Gram Panchayat has never represented themselves inspite of the notice being served. Today the Sarpanch is appearing pursuant to my order dt.14.12.05 and he seeks time. Inspite of several notices he has not been attending the matter and therefore there is no reason for giving time.

2. The present petition is filed challenging the impugned order dt.15.2.05 passed by the

Divisional Commissioner. He has by his order set aside an order dt.26.2.01 passed by the Superintendent of Land Records. The only ground on which the said order has been set aside by the Commissioner is that the Superintendent of Land Records had erroneously exercised power under section 31-A of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 and in fact proceedings are covered by S.32 of the said Act.

3. It is the case of the petitioners that out of the total land of 1.07 hect. the petitioners donated to the Gram Panchayat 3 ares of the land by Registered Gift Deed dt.13.5.54 for the purpose of running the school. However in the notification issued by the Government it is wrongfully shown that the Gram Panchayat is having 10 ares and the petitioners are having 97 ares of the land. Thus, the application was made for rectification of the record under section 31-A of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. The said section 31-A of the Bombay Prevention of Fragmentation and Consolidation of

Holdings Act, 1947 interalia confers power on the Settlement Commissioner for correction of clerical or arithmetical errors. Accordingly the said rectification has been made and the area is shown of the Gram Panchayat as 3 ares in place of 10 ares in consonance with the registered Gift Deed. The said order was challenged by the Gram Panchayat in appeal and the Commissioner held that the exercise of power u.s.31-A is erroneous and power ought to have been exercised only u.s.32 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. The said power u.s.32 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 interalia provides for variation of a scheme on the ground of error, irregularity or infirmity. In my opinion, the view taken by the Commissioner on the application of Gram Panchayat is totally erroneous. The learned counsel for the state has brought to my attention that the 10 ares was shown in the scheme on the basis of mutation entry .However, the mutation entry of the relevant period indicates only 3 ares in favour of Gram Panchayat and not 10 ares and therefore the record is obviously

erroneous and obviously the error of 10 ares is not based on any documents or any other evidence of any nature whatsoever. I am of the opinion that the order passed by the government dt.15.2.05 is erroneous and requires to be quashed and set aside. In that view of the matter, impugned order dt.15.2.05 is quashed and set aside. The order passed by the SLR is restored. Petition is disposed of accordingly. No order as to costs.